

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeene G. Kelly.

Dayton Power and Light Company

Docket Nos. ER96-2602-007

ER96-2602-006

DPL Energy, LLC

ER96-2602-004

ER96-2601-018

ER96-2601-017

ER96-2601-015

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued December 15, 2004)

1. In this order we accept an updated market power analysis filed by Dayton Power and Light Company (DP&L) and its affiliated power marketer DPL Energy, LLC (DPLE) (collectively Dayton). As discussed below, the Commission concludes that Dayton satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Dayton's next updated market power analysis is due three years from the date of this order.

**Background**

2. On September 27, 2002, Dayton filed an updated market power analysis pursuant to the Commission's order granting Dayton authority to sell electric energy and capacity at market-based rates.<sup>1</sup> On October 15, 2004, Dayton submitted for filing a revised updated market analysis pursuant to the Commission's order issued on May 13, 2004.<sup>2</sup>

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<sup>1</sup> *DPL Energy, Inc.*, 76 FERC ¶ 61,367 (1996).

<sup>2</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>3</sup>

3. On October 29, 2004, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to Dayton’s submittal. On November 19, 2004, Dayton filed its response to the data request.

4. DP&L and DPLE are wholly-owned subsidiaries of DPL Inc. (DPL), a diversified regional energy company based in Dayton, Ohio. Dayton states that DP&L provides electric services to more than 500,000 retail customers in West Central Ohio. Dayton states that DPL’s total ownership of electric generating capacity amounts to 4,490 megawatts which includes 3,376 megawatts controlled by DP&L and 1,114 megawatts controlled by DPLE. Dayton states that DP&L and DPLE market wholesale energy from their generating capacity throughout the eastern half of the United States. Dayton states that, as of October 1, 2004, DP&L is fully integrated within the PJM regional transmission organization and its market operations.

### **Notice Of Filings And Responsive Pleadings**

5. Notice of Dayton’s September 27, 2002, filing was published in the *Federal Register*, 67 Fed. Reg. 64,360 (2002), with interventions or protests due on or before October 18, 2002. None was filed. Notice of the October 15, 2004 and November 19, 2004, filings was published in the *Federal Register*, 69 Fed. Reg. 69,596 (2004), with interventions or protests due on or before December 7, 2004. None was filed.

### **Discussion**

#### **Market-Based Rate Authorization**

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>4</sup>

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<sup>3</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh’g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>4</sup> *See, e.g., Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

7. As discussed below, the Commission concludes that Dayton satisfies the Commission's standards for market-based rate authority.

### **Generation Market Power**

8. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Dayton performed a generation market power analysis using PJM Interconnection, L.L.C. (PJM) as the relevant geographic market. Dayton states that it passes both indicative screens in that market. However, Dayton used summer ratings, rather than nameplate ratings as the April 14 Order requires, in its market power study. Dayton states that it used the summer ratings because complete nameplate rating data are unavailable. Dayton also states that this simplifying assumption is appropriate, and it does not affect the underlying methodology. Further, Dayton states that summer ratings are widely used in the industry as a reliable indication of a power plant's true generating capacity.

9. In the Commission's April 14 Order, the Commission stated that appropriate simplifying assumptions are those assumptions that do not affect the underlying methodology utilized by these screens.<sup>5</sup> Dayton is now fully integrated within PJM, which determines the net capability of capacity resources based on current operating performance (seasonal ratings).<sup>6</sup> Therefore, the Commission accepts Dayton's assumption.

10. The Commission has determined that Dayton passes the wholesale market share screen for the PJM market with a market share of less than 4 percent in each of the four seasons considered. The Commission also finds that Dayton passes the pivotal supplier screen for the PJM market. Accordingly, the Commission finds that Dayton satisfies the Commission's generation market power standard for the grant of market-based rate authority.

### **Transmission Market Power**

11. Dayton states that DP&L is now fully integrated into PJM and its market operations. Dayton states that PJM is a Commission-approved regional transmission organization with a Commission-approved open access transmission tariff (OATT) and

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<sup>5</sup> 107 FERC ¶ 61,018 at P 117.

<sup>6</sup> Rules and Procedures for Determination of Generating Compatibility, PJM 2004. See <http://www.pjm.com/contributions/pjm-manuals/pdf/m21v03.pdf>.

market monitoring and mitigation procedures. The Commission notes that this OATT was accepted by Commission order.<sup>7</sup> Further, no intervenors have raised transmission market power concerns. Based on Dayton's representations, the Commission finds that Dayton satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

12. Dayton states that it does not have the ability to exercise control over sites for generation facilities, generation interconnection, and generation fuel supplies, which could represent potential barriers to entry. Further, no intervenors have raised concerns regarding barriers to entry. Based on Dayton's representations, the Commission is satisfied that Dayton cannot erect barriers to entry.

### **Affiliate Abuse**

13. Dayton states that the circumstances relating to affiliate issues have not changed since Dayton's last triennial market power update. Dayton states that DP&L and DPLE are bound by a code of conduct designed to prevent such concerns from arising. Dayton's rate schedules provide that no sales of power will be made to affiliates unless the Commission approves the transaction pursuant to a separate rate filing under section 205 of the Federal Power Act (FPA).<sup>8</sup> Further, no intervenors have raised concerns regarding affiliate abuse. Based on Dayton's representations, Dayton satisfies the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

14. Dayton failed to include revisions to its market-based rate tariffs incorporating the Commission's market behavior rules as required.<sup>9</sup> In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the Commission's market behavior rules at such time as they

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<sup>7</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

<sup>8</sup> 16 U.S.C. § 824d (2000). Consistent with Commission precedent, sales between a traditional public utility and its affiliates are not permitted without first receiving Commission authorization of the transaction under section 205 of the FPA. *See Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002).

<sup>9</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 at Ordering Paragraph (A) (2003) (Market Behavior Rules Order).

seek continued authorization to sell at market-based rates. Therefore, within 15 days from the date of this order, Dayton is directed to revise its tariffs to include the market behavior rules set forth in Appendix A to the Market Behavior Rules Order.

15. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>10</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>11</sup>

16. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.<sup>12</sup> Accordingly, the change of status reporting obligation for Dayton is subject to the outcome of the rulemaking.

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<sup>10</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

<sup>11</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>12</sup> *See Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

17. Dayton is directed to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Within 15 days from the date of this order, Dayton is directed to revise its market-based rate tariffs as discussed in the body of this order.

(B) Dayton's updated market power analysis is hereby accepted for filing as discussed in the body of this order.

(C) Dayton's next updated market power analysis is due within three years of the date of this order as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.